

ISSUES AND ANSWERS SERIES: PROBLEM NO. IX

MEMORANDUM FOR: Director of Central Intelligence

SUBJECT: Major CIA Legislative Objectives

1. Problem

In light of the inevitability of changes to the National Security Act, identify the legislative objectives of the Agency.

2. Recommendations

The Agency should seek changes in its legislative charter to clarify the ambiguities of the 1947 and 1949 Acts and to bring these Acts in line with present-day realities and optimum future possibilities. (A separate paper will address the full range of legislative proposals which have been addressed in the findings of Commissions and which have been and most likely will be, addressed on the Hill.) The OLC and OGC should assemble appropriate legislative package(s) at least in the following areas, and ^{on} such other topics as their current studies underway determine to be appropriate for legislative treatment:

A. Restrictions on US Activities and those Relating to US Citizens

A primary legislative objective, which has support in the Congress is to clarify the proper scope of activities for CIA. Clearly, the key proscription of the 1947 Act "That the Agency shall have no police, subpoena, law enforcement powers, or internal security functions." ^{as distinct from} Any new language ^{vague} should pertain not only to powers and functions proscribed but also to the type of activities authorized. Previous bills drafted by the Agency and the proposed Executive Order should be the starting point.

B. Clarification of Protection of Intelligence
Sources and Methods Responsibility

Critics of the Agency are sure to demand clarification of this statutory responsibility which has been cited as the basis for certain Agency actions of questionable propriety. Directors of Central Intelligence have also pointed to the lack of specific guidance in this area. Finally, citing the need to clarify the extent of the Director's authority in the United States, the Rockefeller Commission proposed, and the Agency concurred in, language changes. Important objectives in clarifying the Director's responsibility in this field include: 1) assurance that the scope of the responsibility is not unduly restricted vis a vis classes of individuals (employees, applicants, former employees, and others associated with the Agency, etc.) or overseas, and 2) ~~that retention of~~ the responsibility ~~is retained~~ by the Director rather than shifted to the Agency (as proposed by the Rockefeller Commission), and 3) retention of the language as words of art for court cases and exemption from various statutes including Freedom of Information Act. Again, the proposed Executive Order would be a suitable guide.

Related to the above clarification is the enactment of the Director's proposal for criminal sanctions to deter the unauthorized disclosure of intelligence sources and methods. (Recommendations on the tactics of enacting this very significant legislation is the subject of a separate paper.)

C. Covert Action

Section 662 of the Foreign Assistance Act restricts the Agency from non-intelligence gathering activities unless the President finds that each such proposed operation is important to the national security, and the findings are reported to the appropriate committees of Congress (now six).

This Section should be repealed if at all possible and in its place should be a provision which would require all activities undertaken pursuant to Section 102(d)(5) of the 1947 Act to be reported to legislative oversight and appropriation committee(s). This would serve the interests of: 1) eliminating the use of the annual authorization for foreign assistance and similar annual enactments as a suitable vehicle for amendments on covert actions be they general or specific; 2) eliminating the need for a written audit trace to the President of the United States and 3) providing enhanced security for sensitive information by limiting access and proliferation.

D. Statutory Duties of the DCI and CIA

The present-day and foreseeable future charter of the Agency should be covered by express statutory authority, e.g., collection of intelligence. Moreover, enhanced authority for the Director in the Intelligence Community or the reorganization of that office (e.g., along the lines of the proposals suggested in the Taylor report) should be reflected in statute.

E. Express Authority to Administratively Adopt Certain Provisions of Law Relating to Other Agencies

Under current law the Agency does not have available to it an annual authorization or other suitable annual legislative vehicle ~~which could~~ use to update ^{Government-wide} changes in personnel concepts, benefits, and programs for which specific statutory authorization is normally required. The Agency's position that the penumbra of section 8(a)(1) and (2) of the 1949 Act provides the Director which authority to adopt other provisions of law for the Agency and its employees in these areas should be ratified by express statutory authority. Such express statutory authority would be

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pattern a provision ~~which has been~~ proposed for CIARDS which would permit administrative adoption of liberalizations in the Civil Service retirement system. Such a provision not only clarifies the authority in question but also reduces the number of occasions when it will be necessary in the future to seek amendments to CIA legislation.

F. Procurement

There are at least two technical deficiencies in our present procurement authorities. One is the lack of express authority to dispose of property, and the other is the lack of express authority to adopt the various amendments to the Armed Services Procurement Act which have been enacted subsequent to the 1949 Act. These deficiencies can be remedied by a general administrative adoption authority as discussed in the previous section.

G. Conflict of Laws or Authority

The ability of American corporations to assist the Agency by providing cover or other services without coming into conflict with general law or the requirements of various administrative agencies has been seriously undermined. Recently the Securities and Exchange Commission has challenged non-disclosure of such cooperation to stockholders. Moreover, it is clear that the various administrative agencies are being placed in a vulnerable position unless they are fully informed of Agency activities in the private sector for which they have responsibility. Attention should be given to the feasibility of statutory language to ameliorate this problem.

H. Conflict with and Application of Sundry Laws

A number of Agency activities such as alias documentation may be viewed as technical violations of various Federal and state laws. In addition, the applicability to CIA of such fundamentally public disclosure statutes as the Administrative Procedures Act should be resolved. Congressional recognition and expression through statutory language or legislative history of their determination concerning these questions would be helpful.

I. Housekeeping

The present statutes applying to the Agency specifically, particularly the 1949 Act, are replete with outdated references which should be technically clarified.

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MEMORANDUM FOR: Director of Central Intelligence

SUBJECT : Agency Command and Control

1. Problem:

To consider whether Agency command and control procedures require strengthening.

2. Position of the SSC:

Both the SSC and HSC have addressed aspects of the command and control of the Agency, but the SSC appears to have concerned itself with the general subject more than has the HSC. SSC inquiries have focused on the character of Executive review and approval, as well as on CIA internal controls, almost exclusively in the context of the review of selected activities from the past. In some instances the SSC has seen a lack of detailed direction from and reporting to the Executive level that might have seemed implicit to the participants at the time under the broad policy of the moment. The SSC also is concerned over evidence that certain operational activity was conducted within CIA in the early 1960s without the knowledge of the DCI. While SSC Staff members are aware that they have concentrated on selected subject matter from the past, they feel that much of what they have seen reflects a basic flaw in the Agency's balance between compartmentation for security and maintenance of adequate command and control; in this sense they do not view what they have seen as atypical. As a third dimension to the question of Executive control of the Agency and internal Agency controls, the SSC probably is considering some extension of requirements for detailed reporting to the Congress.

3. Discussion:

The record of CIA's evolution from its creation in 1947 to the present is one of changing organizational posture to sharpen the focus of program direction. The steady growth of administrative procedures and controls represents growing sophistication

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of management techniques. The management achievements of the separate directorates can be detailed at length, but summary here would over-extend this paper.* Similarly, internal controls represented in the General Counsel, Inspector General, Audit Staff and budget reviews presided over by the Comptroller, serve to strengthen management's control over the Agency.

Throughout the Agency's history, regulations for management procedures and controls have progressed as the understanding of control requirements developed. These procedural provisions culminated in August 1973 with the comprehensive policy and program directives of the DCI, addressing not only procedures but the substantive nature of activities in which the Agency had engaged over the preceding years.

The main problem confronting managers of an intelligence organization is the handling of activities presenting special security considerations. The handling of classified paper does not, of itself, pose insurmountable obstacles. Intelligence analysts can be given the intelligence product without knowing the operational details of its acquisition. Administrators and support personnel usually can provide their services without unusual involvement in or exposure to operational activities. Operational considerations do, however, on occasion present special problems in normal management control.

There is a general operational compartmentation of the Directorate of Operations from the other directorates; however, this does not distort established and working procedures and command review within the Directorate. The problem seems to have arisen in those operations judged to be highly sensitive and therefore requiring special compartmented protection. The number of these in the Directorate of Operations is not large; the number of cases receiving

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* A more complete paper will be submitted at a later date by way of back-up for this one.

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with the level of documented approval and command direction being an important aspect of the criticisms that have been made.

In conclusion, while the Agency's history of administrative growth is not only good but praiseworthy, from the Congressional point of view a soft spot is in the adequacy and degree of command review and control of highly compartmented action programs. To the extent that remedial action is within the power of the Agency, it is in ensuring adequate records of policy approval and in providing some form of internal review equally effective to that given other activities.

4. Recommendation:

That action be taken to ensure minimum but adequate records of policy approval of sensitive, compartmented projects or programs, and that some form of minimum staff review be provided to ensure that each compartmented activity adheres to approved objectives and is implemented in a manner consistent with Agency standards.

Samuel V. Wilson
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Chairman, Ad Hoc Task Group

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